

United States District Court

for the
Western District of New York

In the Matter of the Search of

(Briefly describe the property to be searched or identify the person by name and address.)

Black Apple iPhone, with black SPECK protective case (Subject Phone 1);
 Red Apple iPhone with Pelican protective case (Subject Phone 2);
 White Apple iPhone, IMEI: 358541053563012 (Subject Phone 3);
 Black LG "flip phone", LGIP-531-A (Subject Phone 4)



Case No. 18-mj- 126

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See descriptions included in Exhibit A, attached and incorporated by reference.

located in the Western District of New York, there is now concealed *(identify the person or describe the property to be seized)*:

The items set forth on the attached schedule of items to be seized, attached hereto as Exhibit B and incorporated by reference.

The basis for search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of 21 U.S.C. §§ 841(a)(1), 843(b), 844(a), and 846

The application is based on these facts:

- ☒ continued on the attached sheet.
- ☐ Delayed notice of ____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

THOMAS J. WEBB
 Special Agent
 Homeland Security Investigations

Printed name and title

Sworn to before me and signed in my presence.

Date: August 10, 2018

Judge's signature

City and state: Buffalo, New York

HONORABLE H. KENNETH SCHROEDER, JR.
 United States Magistrate Judge

Printed name and Title

EXHIBIT A

DESCRIPTION OF SUBJECTS TO BE SEARCHED

SUBJECT PHONE 1

Black Apple iPhone cellular telephone, with black SPECK protective case



EXHIBIT A

SUBJECT PHONE 2

Red Apple iPhone cellular telephone, with Pelican protective case



EXHIBIT A

SUBJECT PHONE 3

White Apple iPhone cellular telephone, IMEI: 358541053563012

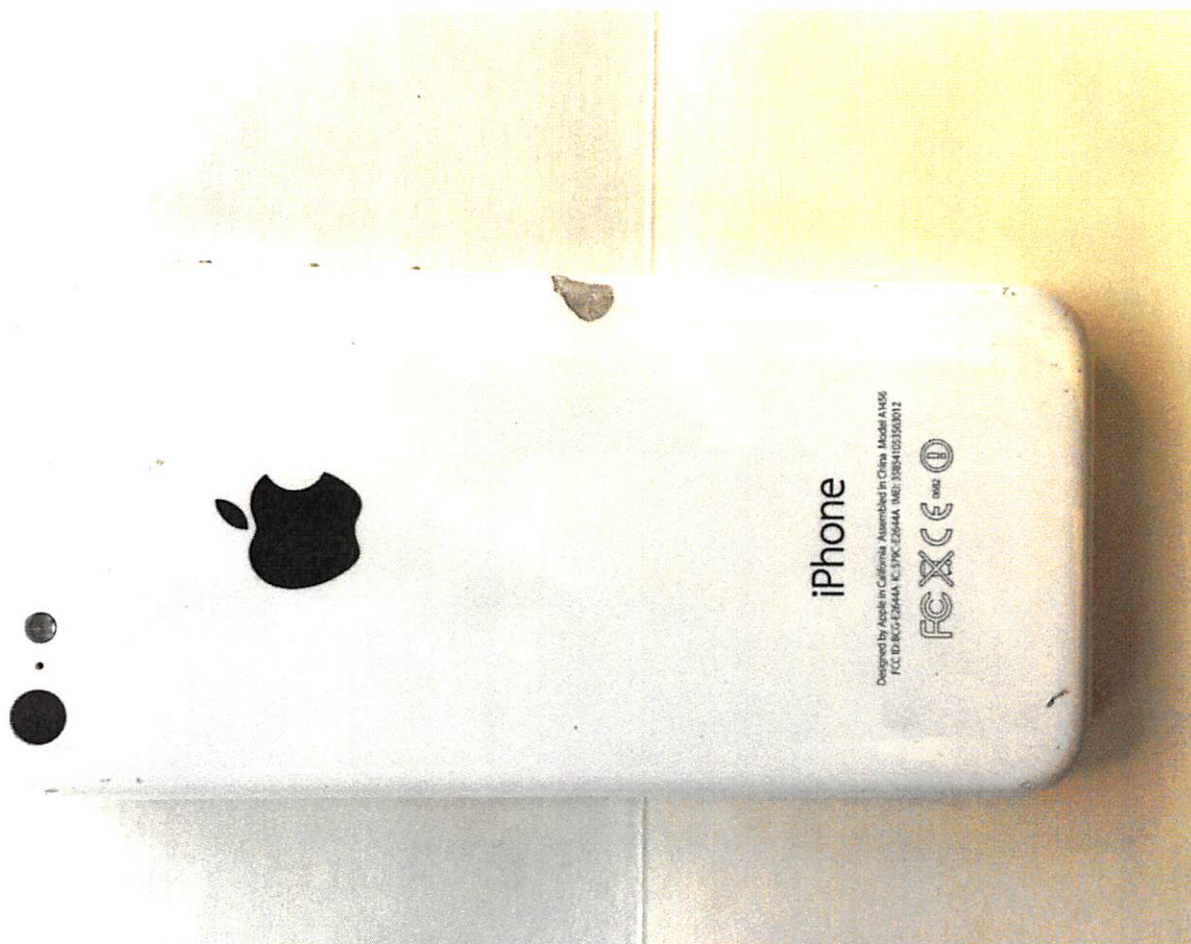


EXHIBIT A

SUBJECT PHONE 4

Black LG “flip phone”, LGIP-531-A

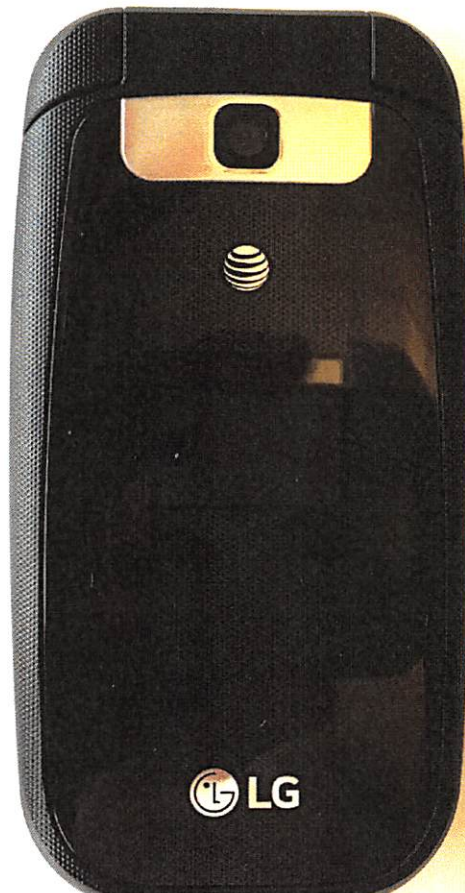


EXHIBIT B

SCHEDULE OF ITEMS TO BE SEARCHED FOR AND SEIZED

Items comprising evidence of, or property designed for use, intended for use, or used in committing violations of Title 21, United States Code, Sections 841(a)(1), 843(b), 844(a) and 846, consisting of:

- a) Records of telephone calls, including incoming, outgoing, and missed calls, phone contact addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers and objects related to drug trafficking, and photographs regarding drug trafficking and drug trafficking associates contained in the cellular telephones;
- b) Text messages and emails contained in the cellular telephones related to drug trafficking and drug trafficking associates; and
- c) Records regarding the ownership and/or possession of the searched items.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **THOMAS J. WEBB**, being duly sworn, depose and state:

1. I am employed as a Special Agent (“SA”) for the Department of Homeland Security (“DHS”), Homeland Security Investigations (“HSI”), Immigration and Customs Enforcement (“ICE”), since August 2007. I am currently assigned to the HSI Border Enforcement Security Taskforce (BEST), which investigates drug trafficking and money laundering organizations that operate in the United States and foreign countries with a nexus to the United States. As such, I am an investigator or law enforcement officer of the United States, within the meaning of Title 18, United States Code, Section 2510(7), and I am empowered by law to conduct investigations of, and to make arrests for, the offenses enumerated in Title 18, United States Code, Section 2516. Furthermore, per the Interagency Cooperation Agreement between the Drug Enforcement Administration (“DEA”) and ICE/HSI, I am a cross designated agent authorized to investigate violations of Title 21, United States Code.

2. During my law enforcement career, I have participated in numerous cases involving the distribution of narcotics. I have participated in successful investigations into illicit drug distribution networks. I am familiar with how controlled substances are obtained,

diluted, packaged, distributed, sold and used within the framework of drug trafficking and how drug traffickers use their persons and personal property to facilitate their illegal activities.

3. Your Affiant states that this investigation was conducted by Special Agents and Officers with HSI BEST, the Drug Enforcement Administration (“DEA”), the Federal Bureau of Investigation (“FBI”), and the Erie County Sheriff’s Office (“ECSO”) (hereinafter, “the investigative team”). Your Affiant is fully familiar with the facts and circumstances of this investigation, such familiarity having been gained through: your Affiant’s personal knowledge based upon your Affiant’s participation in this investigation as well as reports and information received from other law enforcement officers and agencies.

4. This affidavit is made in support of a federal search warrant application for the following cellular phones recovered during the arrest of **DMARIO CAESAR**: One (1) Black Apple iPhone cellular telephone, with black SPECK protective case (**Subject Phone 1**), one (1) Red Apple iPhone cellular telephone, with Pelican protective case (**Subject Phone 2**), one (1) White Apple iPhone cellular telephone, IMEI: 358541053563012 (**Subject Phone 3**); and one (1) Black LG “flip phone”, LGIP-531-A (**Subject Phone 4**).

5. As it is my purpose to obtain a search warrant for which only probable cause is required, I have not included each and every fact learned during the investigation to date. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the Subject Phones, described above, are evidence of, were used in committing, and/or contain evidence/fruits/instrumentalities of violations of: 21 U.S.C. § 841(a)(1) (possession with the intent to distribute, and to distribute, butyryl fentanyl, a Schedule I controlled

substance, and cocaine and fentanyl, Schedule II controlled substances); 21 U.S.C. § 843(b) (use of a communication facility in furtherance of a controlled substance felony); 21 U.S.C. § 844(a) (simple unlawful possession of butyryl fentanyl, cocaine, and fentanyl); and 21 U.S.C. § 846 (conspiracy to possess with the intent to distribute, and to distribute, butyryl fentanyl, a Schedule I controlled substance, and cocaine and fentanyl, Schedule II controlled substances) (hereinafter, “Enumerated Offenses”).

6. The information contained in this affidavit is based upon my participation and upon reports and information received from other law enforcement officers and agencies. This affidavit is provided for the limited purposes of establishing probable cause to support the attached search warrant application and therefore does not contain each and every detail of the investigation.

PROBABLE CAUSE

7. Beginning in May 2018, an investigation was initiated into the narcotics distribution of **DMARIO CAESAR**. Members of the Investigative Team conducted multiple controlled purchases of what was believed to be heroin from **CAESAR**. However, after the suspected heroin was submitted to the Erie County Central Police Services (CPS) laboratory, analysis revealed that the controlled substance was, in fact, butyryl fentanyl, a Schedule I controlled substance. These controlled purchases were conducted at the direction of the Investigative Team and included consensually monitored phone calls with **CAESAR** to facilitate the purchases.

8. During the course of the investigation, members of the Investigative Team engaged in surveillance of **CAESAR**. **CAESAR** was observed to be operating a 2018 white Toyota Camry rental vehicle bearing New York registration HTU4128. The investigation further revealed 1040 Delaware Avenue, Buffalo, NY and 203 May St, Buffalo, NY were locations **CAESAR** frequently visited. Based on the controlled purchases, surveillance, and confidential source information, members of the Investigative Team obtained New York State search warrants for 203 May St., Buffalo, NY, and 1040 Delaware Avenue, Buffalo, NY, apartments 101 and 205.

9. The search warrants were executed on April 24, 2018. The search warrant at 203 May St., Buffalo, NY resulted in the seizure of multiple items including: 1) 89.38 grams of fentanyl from a black plastic shopping bag containing a knotted plastic bag containing gray powder/rocklike substance and numerous black latex gloves; 2) 300.67 grams of butyryl fentanyl from 3 knotted plastic bags contained within a larger plastic shopping bag; 3) 78.58 grams of cocaine and 14.12 grams of fentanyl from a plastic bag that contained 1 knotted bag of the cocaine, 1 knotted bag of the fentanyl, and a digital scale with residue; 4) 37 additional glassine envelopes containing fentanyl (quantity unknown) from a zip-locked bag found in another plastic bag. 30 of the glassine envelopes were received within 3 rubber banded bundles. The larger plastic bag also contained 1 plastic bottle with residue, 1 metal blender with plastic cap with residue, and an additional bag with residue; and 5) additional packaging and items including two more digital scales, a metal press, a bag of cut, and other items not yet tested by the CPS lab. In addition, a .45 caliber glock firearm was recovered from a saddle bag of a motorcycle that also contained many of the items described above.

10. The search warrant at 1040 Delaware Avenue, Buffalo, NY, apartment 101, resulted in the seizure of approximately \$11,000 in U.S. currency, as well as a small amount of marijuana and additional packaging materials.

11. **CAESAR** was read his Miranda warnings and agreed to give a post-arrest statement. **CAESAR** admitted that the narcotics found at 203 May St and the currency found at 1040 Delaware Ave. belonged to him. He further admitted that he sold heroin and cocaine, and that the seized currency were the proceeds of recently sold narcotics. **CAESAR** further admitted that he had handled the .45 caliber glock but denied that he owned it.

12. **Subject Phones 1-4** were seized by the Erie County Sheriff's Office during the arrest of **CAESAR** on April 24, 2018. The phones were subsequently turned over to HSI for analysis.

SUMMARY OF RELEVANT TECHNOLOGY

13. A cellular telephone or mobile telephone is a handheld wireless device used primarily for voice communication through radio signals. These telephones send signals through networks of transmitter/receivers called "cells", enabling communication with other cellular telephones or traditional "land line" telephones. A cellular telephone usually includes a "call log," which records the telephone number, date, and time of calls made to and from the phone.

14. In addition to enabling voice communications, cellular telephones offer a broad range of capabilities. These capabilities include, but are not limited to: storing names and

phone numbers in electronic “address books”; sending, receiving, and storing text messages and email; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Cellular telephones may also include global positioning system (“GPS”) technology for determining the location of the device. Based on your Affiant’s training and experience, and the information learned throughout this investigation, it is known that persons associated with drug trafficking organizations in general utilize the cellular telephones to communicate with others about the possession, transportation, and distribution of controlled substances, including cocaine, fentanyl, and butyryl fentanyl.

SEEKING AUTHORIZATION TO SEARCH AND SEIZE

15. Accordingly, the application seeks authorization to search for and seize all:

- a. Records of telephone calls, including incoming, outgoing, and missed calls, phone contact addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers and objects related to drug trafficking, and photographs regarding drug trafficking and drug trafficking associates contained in the cellular telephones;
- b. Text messages and emails contained in the cellular telephones related to drug trafficking and drug trafficking associates; and
- c. Records regarding the ownership and/or possession of the searched items.

16. Based on my training, my experience, my participation in other narcotics investigations, my participation in this investigation, and my discussions with other experienced law enforcement personnel, I have learned that significant narcotics traffickers

such as dealers in cocaine, fentanyl, butyryl fentanyl, and other controlled substances frequently maintain, in portable mobile communication and storage devices, addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers, and objects related to drug trafficking, and photographs regarding drug trafficking and drug trafficking associates contained in the cellular telephones.

17. Based on your Affiant's experience, it is believed **Subject Phones 1-4** are evidence of and/or contain evidence of the Enumerated Offenses, which have been committed. It is likely that **CAESAR** utilized these cellular devices to contact other suppliers, customers, or co-conspirators regarding the sale of cocaine, fentanyl, butyryl fentanyl, and other controlled substances. As such, I believe that the Subject Property described above contains evidence of the Enumerated Offenses, which have been committed by **CAESAR** and others.

18. Based on your Affiant's knowledge and training and the experience of other Agents with whom I have discussed this investigation, I know that in order to completely and accurately retrieve data maintained in cellular telephones hardware or software, to ensure the accuracy and completeness of such data, and to prevent the loss of the data either from accidental or intentional destruction, it is often necessary that the cellular telephones, related instructions in the form of manuals and notes, as well as the software utilized to operate such a device, be seized and subsequently processed by a qualified specialist in a laboratory setting.

ANALYSIS OF ELECTRONIC DATA

19. The search warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B) of the Federal Rules of Criminal Procedure.

20. Searching the cellular telephones for the evidence described above may require a range of data analysis techniques. In some cases, it is possible for Agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. For example, Agents may be able to execute a “keyword” search that searches through the files stored in a cellular telephone for special words that are likely to appear only in the materials covered in the warrant by looking for particular directory or file names. In other cases, however, such techniques may not yield the evidence described in the warrant. Suspected criminals have the ability to mislabel or hide information and directories; encode communications to avoid using key words, attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps may require Agents to conduct more extensive searches, such as scanning areas of the device’s memory not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your Affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described above.

21. It should be noted that due to the level of encryption that is anticipated on the Subject Phones, the process to extract the information from the phones may lead to the destruction of the phones themselves.

22. Because this warrant seeks only permission to examine devices already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premise. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

WHEREFORE, based upon the foregoing, your Affiant submits that there is probable cause to believe that the **Subject Phones 1-4** are evidence of, and/or contain evidence of the Enumerated Offenses, and/or evidence of other co-conspirators involved in the Enumerated Offenses, which have been and continue to be committed.



THOMAS J. WEBB
Special Agent
Homeland Security Investigations

Sworn to before me

this 10th day of August, 2018



HONORABLE H. KENNETH SCHROEDER, JR.
United States Magistrate Judge